

**MINUTES**  
**of the**  
**CHILD PROTECTION COMMITTEE MEETING**  
**April 24 and 25, 2008**  
**Idaho Supreme Court Building ~ Boise, Idaho**

**THURSDAY – APRIL 24, 2008**

*ATTENDANCE*

Those attending were Judges Murray, Kalbfleisch, MacGregor-Irby, Boyer, Krogh, Buchanan and Harris, Jennifer Gose-Eells, Barry Black, Annie Cosho, Ann Mattoon, Corrie Keller, Mary Jo Beig, Karlene Behringer, Mike Scholl, Andrew Ellis, Matt Hyde, Brent King, Shirley Alexander, Sherm Furey, Amy Castro, Taunya Jones, Chuck Halligan and Debra Alsaker-Burke. Guests: Andrea Khoury, Lori Yellen; Neva Smith and Rafael Salinas. Not present: Liz Brandt and Julie Kane.

**1. WELCOME**

Judge Murray welcomed the Committee and introduced Amy Castro, Legislative Services Office, Budget Analyst.

*Announcements*

- A. Children and Families Institute, May 19 and 20 in Sun Valley.
- B. Next Guardian Ad Litem Subcommittee meeting September 11 and 12, 2008, in Boise.
- C. ICW Conference June 19 and 20, 2008 at Boise State University, in Boise.
- D. Next CP Committee meeting, September 18 and 19, 2008, in Boise.
- E. NACC Annual National Juvenile & Family Law Conference August 3-6, 2008 in Savannah, Georgia.

**2. APPROVE MINUTES**

Judge Buchanan moved to approve minutes for the Child Protection Committee meeting on January 17 and 18, 2008, as submitted. Ann Mattoon seconded and the minutes were unanimously approved.

**3. YOUTH PANEL**

Two foster youth alumni, Neva Smith and Rafael Salinas attended the meeting to share their experiences in foster care with members of the committee.

Neither youth had an attorney or a GAL/CASA. Neither went to court except for one hearing. Neither was asked that they thought or would like with regard to decisions made about them. The committee members asked: What if when they were in court they had heard something that would have been difficult to hear? The youth responded: "We live it - we know it." Both had poor foster placements. Neither youth had a way to get issues before the court.

**Comments by foster youth.**

- A. Visitation for foster youth with birth family should never be restricted or conditioned on behavior of foster youth. Family keeps youth strong. If parents have substance abuse issues, Department should monitor situation. What happens when parents don't show up for visitation?

Very devastating to youth. "You can work with parents all you want, but in the end it's how much they want their child."

B. What age should youth come to Court? Age 10 - at that age they know what is going on.

C. What do youth recommend?

- Include youth at hearings.
- There should be someone youth is comfortable with at court with youth.
- Prepare youth for court.
- Damage control after each hearing.
- GAL could be support person.
- Youth should be at court hearing and be involved in decisions.

D. Did you feel you were better represented in juvenile justice system? Generally, yes.

E. What would your ideal foster home be?

Someone who wanted me and would listen to me. It would have helped me work through my anger management issues if I knew someone was fighting for me. I would like to be treated as normal kid, not a disposable kid that can be shipped on to another home. We were shipped to respite care when family went on holidays or vacations.

Support for who I am. Never our fault we are in care, always the parents fault. We are stereotyped that it was our fault. Live like a normal family.

F. Would it be better to move youth to another home to find better fit?

Yes, but transition slowly. Maybe a weekend then progress into longer visits. Youth might say good fit just to get out of bad home.

G. To help youth in care:

- Buddy system.
- Big Brother/Big Sister with youth coming into care.

H. Single biggest contributor to how kids succeed when they age out is a stable, role model or mentor.

I. What would you change about legal system?

Involve youth in decisions being made about them. Acting out behavior would be lessened if youth were involved in these decisions. "If I could have been in court and heard what was being said about me it would have lessened my acting out behavior."

#### **4. PRESENTATION BY ANDREA KHOURY**

"Seen and Heard - Involving Children in Dependency Court"

Historically youth have not been involved in court in the CP process. Children and Family Services Improvement Act of 2006 started changes to involve youth in court process by requiring age appropriate consultation by judge for all youth regarding permanency.

Transporting youth to hearings: In some jurisdictions the foster parents transport the child at least once per year to court. Foster parents, caseworkers, GAL and youth work together as a team to decide if youth will attend and identify the hearings that are most important for the youth to attend. In some jurisdictions transportation of the youth is addressed in the court's order. If someone other than a caseworker is transporting youth to court that person should be trained to explain to the youth (on the ride back from the hearing) what happened and how that might affect him/her.

Getting youth voice to court:

- Include in CASA/GAL report.
- Include in IDHW report.

Presence of youth should be on case-by-case determination. Default presumption is that youth should be present.

Brightline test: Specific age, with caveat that ultimate decision left to discretion of judge.

Query: Is age a good test? Some five year olds are able to articulate position; some mature youth are not able to comprehend what is occurring. In Maryland, all youth attend, unless note from therapist indicating not in youth's best interest. Other states use specific age.

Benefits when youth participate in court:

- Makes process real; puts a face to a name.
- Reminds parents that they have kids.
- Allows youth to be proactive and understand progress of case.
- May help youth manage behavior and reduce number of moves in care.
- Encourage open discussion.
- More accountability for system and professionals.
- When youth are present, quality of hearing improves; judge pays more attention and people are more prepared.
- Keep people honest and thoughtful.
- Opportunity for youth to communicate fears about safety.
- Sometimes allows mentoring by foster parents for biological parents; sometimes allows bio parents to terminate if foster parents can/will adopt.

Concerns about youth in court:

- Youth may hear prosecutor or other person "strip down" parent.
- Judge may not talk to parent in same manner if youth is present.
- If judge schedules by "cattle call" what will youth do while waiting? Logistics?
- Need someone to monitor and manage interaction between parent/child and safety of child.
- Professionals (judge and attorneys) not trained to interact in developmentally appropriate ways; need training.
- Who will prepare youth? Who will do damage control?
- Youth seeing parents in orange jumpsuit.
- What about impact of involvement of a parent who has not been a part of youth's life?
- Youth seem scared in court; will it impact their psyche?
- Transportation

- Resources
- Need to have foster parent present so foster parent can process with youth.
- Lack of confidentiality; no room for confidential conversation.

Preparation is critical. We must prepare youth for coming to court. An advocate that youth knows and trusts must be present in court.

Judge needs to be advised of presence of youth and of issues that may need to be addressed

Youth need advocate to be present for all parts of the hearing.

Person who prepares youth should stay and process with youth afterwards.

“Cattle call” issue: Possible solution - schedule three cases at 8:00 am; three cases at 8:30 am; and three cases at 9:00 am.

Chapin Hall Study - Palm Beach County, Florida Legal Aid: Youth who were interviewed said they were scared to go to court, didn't often understand what was decided during the hearing, but despite that wanted to be in court and have a voice.

**Action Item:** Debra Alsaker-Burke to follow-up with Andrea Khoury on electronic version of Chapin Hall study.

### **Policy and Practice Considerations:**

Need to have policy - not ad hoc practice. Criteria to consider in developing policy:

Will attending court disrupt the youth's routine?

Will court be confusing or boring for youth?

Who will transport?

Will court need additional time for the hearing?

What type of hearing is scheduled?

### **Paradigm Shifts:**

Need systemic changes to increase youth participation:

- Statute and court rules.
- Appropriate court administrative policies.
- Youth's representative to be present.

### **Accommodate youth in court:**

- Timely advancement of hearing.
- Schedule next hearing to accommodate youth as well as adults.
- Court orders can require youth to be present.
- School accommodations - encourage/develop policy that school cannot punish youth for any absence related to CP case.
- Educate youth on court process.

### **Brainstorming:**

#### **A. TONING DOWN OF ADVOCACY OR JUDGES COMMENTS TO “PROTECT YOUTH.”**

Depends on youth - case-by-case assessment. Social worker, GAL, attorney, youth or foster parents could notify court of concerns about youth being present.

#### JUDGE RESOLVES CONFLICT ABOUT WHETHER YOUTH SHOULD BE PRESENT.

##### IDEAS:

- Develop and use a “prehearing checklist.”
- Don’t need to “tone down” truth - just way that we present message.
- Presume that youth should be present unless child’s therapist indicates that it would be detrimental to youth. Checklist could support motion by party that child should not be present.
- Who should be responsible for generating completion of “checklist”? How do we get issue to judge?
- Consensus on presumption youth age 8 and over will be present at all post-adjudicatory hearings. At hearing, if someone has an objection about youth remaining for entire hearing, objection made at hearing. Judge will rule from the bench.

#### **B. KIDS WAITING AROUND.**

##### **Possible solutions:**

- Time certain hearings.
- Allocate waiting space - jury room?
- Hold hearings where youth present first.

#### **C. NEED CHILD DEVELOPMENT ISSUE TRAINING FOR ATTORNEY AND JUDGES.**

- Training for judges and attorneys.
- Representation of child certify by NACC.
- Bench card on age appropriate questions.

#### **D. TRANSPORTATION.**

- Default position is that agency transports.
- Family Service Techs.
- Psycho Social Rehabilitation workers.
- Foster parents (make part of foster parent agreement).
- Possibly GAL.
- Youth with driver’s license (but on foster parents’ insurance which may present problem).
- Consensus: IDHW should be responsible for transportation.

#### **E. WHO WILL PREPARE YOUTH FOR COURT?**

- Attorney representing child/youth.
- GAL/IDHW (consult with experts and make recommendations)
- “Court Training” for youth
- Develop video for youth using CARTF Funds
- Foster parent
- Social worker

**FRIDAY APRIL 25, 2008**

Present: Judges Murray, Kalbfleisch, MacGregor-Irby, Boyer, Krogh, Buchanan and Harris, Corrie Keller, Jennifer Gose-Eells, Barry Black, Annie Cosho, Ann Mattoon, Corrie Keller, Mary Jo Beig, Karlene Behringer, Mike Scholl, Andrew Ellis, Matt Hyde, Brent King, Shirley Alexander, Sherm Furey, Amy Castro, Taunya Jones, Chuck Halligan and Debra Alsaker-Burke. Not present: Liz Brandt and Julie Kane.

**5. Guardian Ad Litem Budget Recommendations.**

Judge Murray reviews proposed GAL budget with Committee. Judge Buchanan moved that proposed 2009 budget for GAL programs be approved; Mike Scholl seconded. Unanimously approved (see attachment to the minutes).

**6. Update on Representation of IDHW: "Strike Team."**

Kootenai County Deputy Prosecutor, Barry Black, reports that he believes that child protection cases are moving through the system but there is beginning to be a delay in hearings for juvenile cases.

Sherm Furey reports that he plans to request additional Deputy Attorneys General (DAG's) to place around the state to assist with child protection cases. The Committee thanked the Court for allocating the resources to address the problems in First and Third Districts.

Shirley Alexander asked if there was a final policy and protocol for transferring TPR cases from the prosecutor's office to the DAG's. Brent King (Region 3 DAG - Canyon County) indicated that the DAG's have developed criteria to identify TPR cases that they will accept from the Canyon County Prosecutor's office. The criteria have not been formally put in place, but are being used informally. Some cases that the DAG's will accept are cases where there is a conflict of interest, parents are developmental disabled or have significant mental health issues. Judge Murray asked if a written protocol would be useful. Sherm Furey indicated that his office would develop the written MOU for Canyon County and bring it to the next Strike Team meeting on June 13, 2008.

**Action Item:** Office of Attorney General to develop written Memorandum of Understanding (MOU) for transfer of TPR case from prosecutor to deputy attorney general in Canyon County and bring MOU to Strike Team meeting on June 13, 2008.

Judge Murray reported that the Strike Team agreed that IDHW will bring proposal for model of legal representation. The Attorney General's Office, courts and the Idaho Prosecutors Association will review the list with IDHW and develop a recommendation for a statewide model. Once there is an agreed upon model, MOUs will be developed to implement the model locally.

Judge Murray asks members of the CP Committee to bring to committee service issues so that resources can be brought to bear to address issues.

Judge Murray stated that beginning in September 2008, CP cases will show upon judicial class sheets. Over the summer the Court will work on developing which reports will show on class sheets. Corrie states that data entry will be key to good tracking results and each agency needs to track these cases to that we have a check and balance system.

**7. Share Point Demonstration**

Darren Trumbull presented the Share Point program and gave the Committee information on how this can be used by the Committee to share information and/or data on line. The Committee prefers the calendar view rather than the bullet list view.

Log in: <https://sharepoint.idcourts.us/>

User name: dw\((first initial last name) Share08

**Action Item:** Julie Hall and Darren will work together to develop a “cheat sheet” for access and use of Share Point. Darren will send an email with password.

**8. Rules Subcommittee****Placement Authority of Court**

Judge Krogh reviewed history of discussion regarding placement authority of court in contested cases. Manual sets out guidance on this issue. Judge Krogh recommends that we not proceed further on this issue. So moved, Mary Jo Beig seconded, unanimously approved.

**IJR 44, 45 and 46**

Judge Krogh reviewed proposed amendments to IJR 44, 45 and 46 (meeting materials pp 44, 46 and 47). Jennifer Gose-Eells moved to adopt proposed amendments to IJR 44, 45 and 46; seconded by Judge McGregor-Irby and unanimously approved.

**IJR 50**

Amendment clarifies process for change of venue of child protection cases (meeting material p 48). Shirley Alexander moved that Committee approves proposed amendment to IJR 50; seconded by Ann Mattoon and unanimously approved.

**IJR 55**

Mary Jo Beig reviewed need for and reasons behind development of juvenile rule to define a process for court review of voluntary out of home placements. Federal law requires review of every placement, voluntary or otherwise, of any placement for more than 180 days. Discussion was held about whether IJR 55 would apply to situations where parents place child with another family member due to other circumstances. Committee determined that a comment clarified that this only applies to cases where IDHW is involved. Mary Jo Beig moved for approval of proposed new Idaho Juvenile Rule 55; seconded by Judge Harris and unanimously approved.

**I.C. § 16-1603**

Proposed amendment to clarify authority of court where court has jurisdiction over child, allegations against one parent but not against the “innocent” or “non-offending” parent (meeting materials p 51). Proposed amendment clarifies that when court has jurisdiction over child, court has jurisdiction over both parents. CPA provides remedies available to court in terms of disposition of the case.

Mary Jo raised question of whether proposed new IJR addresses jurisdiction over Department. After much discussion, Judge Krogh to draft statement of purpose clarifying that proposed new IJR 55 does not cover IDHW or address IDHW party status.

Moved by Andrew Ellis to approved proposed new IJR 55; seconded by Ann Mattoon and unanimously approved.

**Action Item:** Debra Alsaker-Burke will forward proposed amendments to IJR 44, 45, 46, 50 and new IJR 55 and proposed amendment to I.C. 16-1603 to Michael Henderson to resent at July Administrative Conference. Debra Alsaker-Burke to circulate draft statement of purpose to I.C. 16-1603 to CP Committee members for comment and approval. When approved, Debra will forward to Michael Henderson.

**Action Item:** Liz to update CP manual and Bench Cards to reflect amendments to Idaho Juvenile Rules and IC 16-1603 if approved by Idaho Supreme Court.

### **Referral to Rules Subcommittee**

A. Judge Boyer asks Rules Subcommittee to address issue of model summons for parents notifying them of right to counsel. No draft model summons. 1991 Court of Appeals case requires notice to parents of right to counsel in any involuntary TPR cases. Committee approves referral to Rules Subcommittee.

B. Judge Krogh reports on IRCP 7(b)(4) relating to parties phoning in to participate in hearing. Judge Krogh does not see that rule prohibits parties from phoning in to participate in hearing by telephone. Taunya Jones notes that in interviewing judges for the ICPC assessment, judges are routinely doing this. No judge raised this as an issue. Committee determines that no further action needed on this issue.

### **9. CAP Award**

Judge Kalbfleisch described the seven nominees for this year's CAP Award. The CAP Award Committee recommends that the CAP Award go to retiring Prosecutor Phil Robinson from Bonner County. Phil Robinson is the elected prosecutor in Bonner County. He was nominated by IDHW in that region. Phil feels these cases are so important that he handles them himself. Phil calls multidisciplinary teams. IDHW feels well represented by Prosecutor Phil Robinson.

Barry Black makes motion to accept recommendation of the committee; Judge Boyer seconds. The motion was unanimously approved.

**Action Item:** Judge Murray to contact Prosecutor Robinson. Debra Alsaker-Burke to ask Peggy to get plaque. Judge Kalbfleisch to present award at lunch with youth panel.

### **10. Preliminary Results of CFSR**

Shirley briefly updated the committee on CFSR results. Discussion about need to work on time to permanency. Discussion on need for committee to focus on what needs to occur from permanency to adoption.

Amy Castro suggests that county prosecutors and IDHW be surveyed to assess areas of concern so that there is support for budget requests. Amy notes that September and October is key timeframe for proposal to next legislative session.

### **11. Report on Self Assessment and Children and Family Services Review**

Shirley Alexander reported that Idaho did well on Well Being Outcome 2, Safety Outcome 1, Well Being Outcome 3, state did "average" on Permanency Outcome 2 and Safety Outcome 2. Permanency outcome 2 highlighted need to involve absent parent, whether motive of father.



State did not perform well on Well Being Outcome 1 and Permanency Outcome 1. Issues relating to courts include lack of legal representation for IDHW. Lowest score was Permanency Outcome 1, relating to timeliness in general, specifically time to adoption.

On Systemic Factors, statewide information system, quality assurance system and staff and providing training Idaho did extremely well. Systemic factors that have not been identified as a strength or area needed improvement including Foster and Adoptive Licensing, Recruitment and Retention, Agency Responsiveness to Community and Service Array and Resource Development. Systemic Factor needing improvement is case review system. This relates to timeliness of TPR and adoption and allowing foster parents to be heard. Also services offered by IDHW may not be culturally relevant.

Discussion about how CP Committee can address issue of increasing refugee population in Boise and Hispanic population in Canyon County. See attachment to Minutes.

Program Improvement Plan (PIP) must be submitted within 90 days of final report from Feds. Feds have 90 days from CFSR to send final report.

## **12. Report on Results of Reassessment and ICPC Assessment**

Taunya Jones reported on results of reassessment. Taunya indicated that the draft assessment should be ready for CFI in mid-May 2008.

### **Timeliness**

Some delay in initial stages of case around securing counsel for parents. Some issues with calendaring in some locations. Most significant finding was delay in filing and hearing TPR and delay in hearing petition due to calendaring issues.

### **Quality of Hearing**

Courts not always making case specific findings. Not all jurisdictions use RE (reasonable efforts) affidavits from social workers to get case specific findings. (Shirley notes that after CFI, CP Committee work group and IDHW will develop standardized reports for court.) Review hearings generally at least every six months. Differing opinions on effectiveness of more frequent review hearings; differing judicial philosophies on purpose of review hearing. Some judges use reviews as quick "check in" and other use review hearings as way to move case forward.

ICWA is an area where courts could better apply best practices. Recommend additional training on ICWA.

ICPC report is the combined effort of Liz Brandt and Taunya. Erica Wainaina, IDHW, ICPC expert, has concern that Idaho judges sending youth out of state without triggering ICPC; confirmed by interviews. Second concern is premature termination of Idaho cases. Most frustrating aspect of ICPC to Idaho courts is delay on part of receiving states. Training needed in this area, particularly relating to CPC Regulation 7.

### **Legal Representation - Children/GAL**

Legal representation for children and GAL - pretty high representation of GAL for children. Problems associated with appointing public defender to represent GAL. Attorney for child is are

appointed in less than 5% of cases statewide. Need training on difference between best interest and express wishes. Children are rarely attending CP hearings.

### **Parents**

In early stages of case, the percentage of parents with counsel is relatively high, this decreases over life of case.

### **IDHW**

Lack of representation for IDHW is serious issue statewide. Representation for IDHW varies by county. Where there is conflict between prosecutors and IDHW, significant delay in cases. Where prosecutor declines to represent IDHW, leaves IDHW with no voice in court.

### **13. Report on GAL Programs**

GAL programs report by Matt Hyde. GAL programs participated in half of standards of excellence program for not-for-profits. Matt commented on value of sharing of information among programs. Programs shared ideas on handling problems common to all programs. Executive Directors agreed on desire for annual conference. ICASAA to move forward on annual conference for GAL programs.

Programs are waiting to see how relationship between State Coordinator, ICASAA and programs develop.

Big issue for programs is new focus on children and youth in court. Need policy and practice on how to involve youth in court.

Programs are also concerned about financial impact on programs if court appoints legal counsel for youth. How will we collectively address these issues?

Representation for GAL also an issue. Legal representation varies by program. Concern about resources to make legal representation for GAL's available. Programs also approved development of statewide MOU with IDHW, supported by local MOU, to address county or district specific issues. Shirley has addressed this issue with program managers and they support idea. Valerie Burgess will be point person on this project for IDHW. Key will be making sure document is developed by representation from GAL programs and IDHW.

National CASA prohibits programs from approving a stipulation that voluntarily dismisses with safety plan. CASA can no longer be involved if case is dismissed with safety plan. Programs will attempt to resolve this issue locally.

**Action Item:** During summer of 2008 Debra Alsaker-Burke and Shirley Alexander will convene a working group to develop statewide MOU between GAL programs and IDHW.

### **14. Report on New Region X Collaborative**

Debra Alsaker-Burke reported that in the states of Oregon, Alaska, Washington and Idaho there is no age appropriate consultation plan in place and, IDHW a party and represented by "state attorney" in Oregon, Alaska and Washington.

### **15. Update: CFI in May 2008**

Everyone is encouraged to attend CFI in Sun Valley. The majority of the Committee is planning to attend.

**16. ADJOURN.**

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DRAFT